

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Sections 74.1203(a)(3) and)	RM No. 11786
74.1204(f) of the Commission's Rules to)	
Protect Local Radio Service Provided by)	
Fill-In Area FM Translators)	

To: The Commission

**COMMENTS OF SHELBY BROADCAST ASSOCIATES, LLC,
IN SUPPORT OF AZTEC CAPITAL PARTNERS, INC.
PETITION FOR RULE MAKING**

I. General Context

Shelby Broadcast Associates, LLC ("Shelby"), proposed licensee of FM Translator Station W252BE, Tarrant, Alabama, hereby endorses the rulemaking proposal submitted by Aztec Capital Partners, Inc. ("Aztec") in a Petition for Rulemaking, filed on April 7, 2017. Aztec proposes changes in and clarifications of Part 74 of the Commission's Rules governing translator interference to full-service FM stations outside the latter's protected contours. Aztec argues forcefully that changes in Part 74 of the Rules in 1990, reaffirmed in 1993, to restrict FM translators' incursions into full power stations' markets have outlived their usefulness and swung the regulatory pendulum too far toward that sometimes anti-competitive purpose. Rather, the Commission must recognize the critical role FM translators are now playing in the revitalization of AM radio and in the advancement of digital subchannel enhancements to local aural programming, including content aimed at unserved and underserved minority audiences. As Aztec advocates, aggressive FCC action is warranted.

II. Shelby's Interest

Shelby is currently embroiled in a proceeding at the FCC, wherein, a full-service

station, WFXO (FM), Stewartville, AL, Facility ID # 704, claims that an FM translator station soon to be owned by Shelby is interfering with WFXO. In that case, WFXO's licensee relocated its transmitter in January 39.7 kilometers, thereby creating an area of contour overlap between W252BE and WFXO where none existed before. (Although, it must be noted that the two stations remain over 45 miles apart.) As a result of this new overlap and concomitant alleged actual interference triggered by the full power station's move, WFXO has sought an FCC order suspending the translator's operations. WFXO alleges that the translator is causing interference both inside and outside WFXO's protected F(50,50) contour, though the scattering of complaints proffered demonstrates the frivolousness and legal insufficiency (even under CURRENT rules). W252BE has proposed an alteration to its facility substantially lowering its proposed height to alleviate the overlap. However, WFXO has to date shown no signs of retreat from its demand of a major reduction in facilities which would gut the translator's sustainability or a channel switch, which likely is impossible under current Commission Rules. Further, the current Rules will allow WFXO to wear down Shelby by a process of attrition through ongoing, drummed up complaints.

The W252BE/WFXO scenario is highly unusual in the current translator/full-service environment since it was the full-service station's move that created the overlap, not the translator's incursion. W252BE has acted as the FM translator for WAYE(AM), 1220 kHz, in Birmingham, AL, since 2014. W252BE is the sole FM Spanish-language signal in the entire state of Alabama, serving the fastest growing minority demographic in the state. and its loss would be devastating to the Hispanic population in the Birmingham metropolitan area.

The anachronistic FCC Rules that govern translator interference allow WFXO to continue to file complaints against Shelby until W252BE is forced off the air (there are no available channels for W252BE displacement).

III. General Factors

As Aztec correctly states in its Petition, the FCC's current interpretation of Sections 74.1203(a)(3) and 74.1204(f) is a "perversion of the 'fair, efficient, and equitable distribution' provisions of Section 307(b) of the Communications Act."¹ We agree. The Rules that govern translators were written in an era when these facilities were not the lifeline to economic viability for AM stations that they are currently. Especially in a scenario where the translator did nothing to create protected/interfering contour overlap, the public interest demands a deeper, more balanced analysis of the relative competing factors and priorities between full powers' and translators' interests. AM licensees who also operate FM translators should not be forced to deal with periodic harassing streams of complaints from FM full-service licensees. Their complainants are often not "regular listeners" or "disinterested," they refuse to cooperate in translators' remediation efforts, and they are unable to specify where the interference occurs and they claim to experience interference well beyond the full powers' service contours, 40 to 50 miles or more from the full-service stations' transmitting facilities.

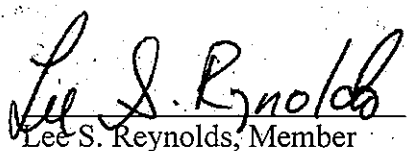
IV. Conclusion

The arbitrary and capricious rules governing translator interference are outdated and not in accordance with the Chairman's goal of AM revitalization. The current Rules threaten translators who are providing many AM stations a financial lifeline with the loss of their licenses simply because a full-service station manages to scrounge up a few complaints about interference, regardless of whether the complaints occur inside or outside the full-service station's service contour. Shelby supports Aztec's goal of providing complaining full-service stations to prove a significant public interest in removing the interfering translator from the airwaves. As Aztec states: "Local radio service provided by an FM translator should not be

¹ Aztec Capital Partners Petition for Rule Making, MB RM-11786, pg. 4, paragraph 4.

removed from the air by the FCC unless there is a significant public interest reason to do so, and the public would be significantly served by such a loss of service.”² Shelby wholeheartedly agrees with this core principle, and it hereby requests the adoption of Aztec’s proposed rule changes.

Respectfully submitted,



Lee S. Reynolds, Member

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May 18, 2017

² Aztec Capital Partners Petition for Rule Making, MB RM-11786, pg. 10, paragraph 15